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Raser Technologies, Inc. et al., Order on Defendants' Motion for Entry of Final Judgment under O.C.G.A. 9-11-54(b)

John Goger
Fulton County Superior Court

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Goger, John, "Raser Technologies, Inc. et al., Order on Defendants' Motion for Entry of Final Judgment under O.C.G.A. 9-11-54(b)" (2015). *Georgia Business Court Opinions*. 341.
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



RASER TECHNOLOGIES, INC., by and through)
Houston Phoenix Group, LLC as its Attorney-in-)
Fact; THOMAS COLLENTINE, JR., JUDITH)
COLLENTINE, CHARLES FAIRES, SANDRA)
FAIRES, STEPHEN E. HART, LORI F. HART,)
ALAN S. LISEBY, WILLIAM McALAVANY,)
JOANN McALAVANY, EUGENE TIFFIN,)
TIFFIN, INC., ROBERT BAIR, JEFFREY)
ESFELD, MICHAEL ESFELD, SIGRID ESFELD,)
JAMES BAKER, JR., ROBERT BAKER,)
RICHARD HASKELL, SUSAN S. HASKELL,)
WILLIAM BURNSIDE, ROBERT KORNFELD,)
RICHARD BURHMAN, as Trustee of the)
Charitable Remainder Unitrust Agreement of)
Wesley W. Cash, Sr., JANE MAJ, RONALD G.)
MAY, DONNA CASH, as Executor of the Estate of)
Dorothy Connelly, JUDY MUNZI, MARK)
SANSOM, GARY SCHUSTER, CHESTER)
SCOTT, JOHN SCOTT, PHILLIPS W. SMITH,)
KELLY TRIMBLE, OCEAN FUND, LLC,)
WARNER INVESTMENTS, LLC, MAASSI, INC.,)
RONALD WINCHELL, JOAN W. WINCHELL, as)
Trustee of Winchell Nonexempt Terminable Trust,)
DOUG WIVIOTT, and MARCIA WIVIOTT,)

Plaintiffs,)

v.)

MORGAN STANLEY & CO., LLC, GOLDMAN)
SACHS & CO., LP, MERRILL LYNCH, PIERCE,)
FENNER & SMITH, INC., UBS SECURITIES,)
LLC, AND [ABC CORPORATIONS],)

Defendants.)

Civil Action File No.
2012CV214140

ORDER ON DEFENDANTS' MOTION FOR ENTRY OF FINAL JUDGMENT UNDER O.C.G.A.
§ 9-11-54(b)

This matter is before the Court on Defendants' Motion for Entry of Final Judgment Under O.C.G.A. § 9-11-54(b) (Against Certain Plaintiffs). Upon consideration of the briefs on the motion and the record of the case, this Court finds as follows:

On July 11, 2013 this Court dismissed the Non-Georgia Plaintiffs' claims, but permitted the Non-Georgia Plaintiffs' to re-plead their statutory claims within a reasonable time.

Plaintiffs' filed an amended complaint and a motion for reconsideration on August 19, 2013.

Defendants responded with a motion to dismiss the Non-Georgia Plaintiffs on October 4, 2013.

On February 26, 2014, the Court denied Plaintiff's motion for reconsideration, and granted Defendants' motion to dismiss finding that Georgia lacked a sufficient interest in the Non-Georgia Plaintiffs' claims to invoke the public policy exception to the doctrine of *lex loci delicti*. However, the Court again allowed the Non-Georgia Plaintiffs' leave to re-plead within a reasonable time to the extent a racketeering claim was available under the laws of the Non-Georgia Plaintiffs' forum states.

On March 7, 2014, this Court certified the February 26, 2014 order for immediate review. The Court of Appeals affirmed this Court's decision on March 30, 2015, and the case was remitted on April 14, 2015.

On April 27, 2015, Defendants filed their Motion for Entry of Final Judgment Under O.C.G.A. § 9-11-54(b) against the Non-Georgia Plaintiffs contending there are no remaining issues and there is no just reason for delay in entering final judgment. The Non-Georgia Plaintiffs responded to the motion contending entry of final judgment is inappropriate for three reasons. First, there is just reason for delay because both the July 13, 2013 and February 26, 2014 Orders allow Plaintiffs' leave to amend their complaint and they are preparing amendments. Second, the Non-Georgia Plaintiffs are now able to amend because the appeals have been resolved and the stay of the case is no longer in effect. Third, fourteen of the Non-Georgia Plaintiffs filed voluntary dismissals on May 28, 2015, and, therefore, divested the Court

of jurisdiction over those Plaintiffs. On June 26, 2015, Plaintiffs' filed their Third Amendments to First Amended Complaint.

An order that, "adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties..." O.C.G.A. § 9-11-54(b). Additionally, "[a] party may amend his pleading as a matter of course and without leave of court at any time before entry of a pretrial order." O.C.G.A. § 9-11-15(a).

Here, the July 13, 2013 Order and February 26, 2014 Order dismissed less than all the claims. In such, the Non-Georgia Plaintiffs remain parties to this litigation. Because they remain parties to the litigation, the Non-Georgia Plaintiffs may amend their pleading at any time before the entry of a pretrial order have done so. Therefore, this Court will not enter final judgment against the Non-Georgia Plaintiffs who have amended. Accordingly, as to Plaintiffs Donna Cash, Richard Haskell, Susan S. Haskell, Jane Maj, James Baker, Jr., Phillip W. Smith, Kelly Trimble, Ocean Fund, LLC, Massai, Inc., Warner Investments LLC, Raser Technologies, Inc., Robert Baker, Ronald Winchel, Joan Winchel, and Peter Emily, Defendants' Motion for Entry of Final Judgment is hereby **DENIED**.

However, the Non-Georgia Plaintiffs cannot voluntarily dismiss their claims because those claims have already been dismissed by the Court. The right to voluntarily dismiss "cannot be exercised after the entry in the trial court of a verdict or judgment for the defendant because the right given to the plaintiff...cannot be used to deprive the defendant of victory thus gained." *Kilby v. Keener*, 249 Ga. 667, 667 (1982) (When plaintiffs filed a voluntary dismissal after the entry of an order granting a motion to dismiss instead of amending or appealing, their voluntary dismissal was held ineffective because allowing voluntary dismissal after an order granting a motion to dismiss would strip the prevailing party of its victory). Thus, the voluntary dismissals

filed on May 28, 2015, by Plaintiffs Gary Schuster, Ronald G. May, Robert Kornfeld, Sigrid Esfeld, Chester Scott, Michael Esfeld, Jeffrey Esfeld, Richard Burhman, William Burnside, Judy Munzi, John Scott, Marcia Wiviott, Mark Sansom, and Doug Wiviott are ineffective.

Accordingly, the Non-Georgia Plaintiffs who filed voluntary dismissals have demonstrated they do not intend to amend and have no remaining claims against Defendants. Therefore, there is no just reason to delay in entering final judgment against them. Thus, pursuant to O.C.G.A. § 9-11-54(b) it is hereby **ORDERED THAT FINAL JUDGMENT BE ENTERED** in favor of Defendants and against the following Plaintiffs: Gary Schuster, Ronald G. May, Robert Kornfeld, Sigrid Esfeld, Chester Scott, Michael Esfeld, Jeffrey Esfeld, Richard Burhman, William Burnside, Judy Munzi, John Scott, Marcia Wiviott, Mark Sansom, and Doug Wiviott (collectively the “Dismissed Plaintiffs”). The Clerk of Court is **DIRECTED** to enter final judgment reflecting that all of the claims of the Dismissed Plaintiffs against the Defendants have been dismissed.

SO ORDERED this 30 day of June, 2015.


JOHN J. GOGER, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

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